

STATE OF MICHIGAN
COURT OF APPEALS

HELEN A. LANE,

Plaintiff-Appellant,

v

TERRY M. LANE,

Defendant-Appellee.

UNPUBLISHED

June 11, 2002

No. 237227

Schoolcraft Circuit Court

LC No. 00-003024-DM

Before: Griffin, P.J., and Hood and Sawyer, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a judgment of divorce. We affirm in part and reverse in part.

Plaintiff first alleges that the trial court erred by failing to award alimony or reserve the issue for future consideration. At trial, plaintiff requested \$100,000 as alimony in gross, payable weekly, in order to avoid conflict and future contact between the parties. Alimony in gross is a misleading term because it is not intended for spousal maintenance, but rather, is in the nature of a division of property. *Staple v Staple*, 241 Mich App 562, 566; 616 NW2d 219 (2000). Retirement benefits may be distributed through the division of property or an award of alimony, depending on the equities and circumstances of each case. See, e.g., *Magee v Magee*, 218 Mich App 158, 164-165; 553 NW2d 363 (1996). Review of the trial court's opinion reveals that spousal support was warranted, but a separate spousal support award did not occur because the issue was resolved by division of the assets. Thus, contrary to plaintiff's assertion, the trial court essentially awarded plaintiff, through its division of assets, alimony in gross by awarding \$125,000 of the 401(K) to her.¹ Accordingly, this claim of error is without merit.

¹ The trial court addressed alimony in gross in the opinion issued after trial. The order portion of that same opinion provides that: "No spousal support shall be awarded and spousal support shall be forever barred." Plaintiff cites only to this order and ignores the trial court's opinion that delineates how alimony would be allocated. Additionally, at the hearing to award additional stock, the trial court inquired whether the stock should be divided as alimony or property. Plaintiff's counsel did not object to the trial court's characterization or seek clarification regarding the opinion and order addressing alimony.

Plaintiff next alleges that the trial court erred when it imputed income to plaintiff for purposes of determining child support. We reverse and remand on this issue. A trial court may impute income based on an unexercised ability to pay. *Ghidotti v Barber*, 459 Mich 189, 198; 586 NW2d 883 (1998). However, when imputing income, the trial court must make specific findings. *Id.* The ability to pay child support requires an evaluation of employment history, education and skills, available work opportunities, diligence in locating work, personal history, assets, health and physical ability, and availability for work. *Id.* The trial court failed to make specific findings regarding plaintiff's ability to pay and any imputed income. Accordingly, we remand for the limited purpose of delineating findings regarding the child support issue.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Richard Allen Griffin

/s/ Harold Hood

/s/ David H. Sawyer